

Remarks

Claims 15-24 were pending and upon entry of this amendment claim 20 will be amended, and no claims will be cancelled or added. Therefore, claims 15-24 will be pending.

Support for the claim amendments can be found throughout the original specification including the original claims. More specifically, support for the amendment of claim 20 can be found on page 20, third full paragraph.

Objection under 35 USC §132 (a)

The Examiner has objected to the Amendment filed August 7, 2007 because the amendment allegedly enters new matter into the specification. Applicant disagrees.

The specification was not amended by the previous submission. Therefore, no new matter was entered.

Applicant submitted an information disclosure statement along with the marked up specification to ensure that the issues that had recently been identified by Applicant were placed into the record. The information disclosure statement did not amend the specification to include the corrected numbers. Therefore, Applicant asserts that no new matter has been entered.

Enablement - 35 USC § 112

The Examiner has objected to all of the outstanding claims because the specification allegedly does not provide enablement for the claims. Applicant disagrees.

Applicant acknowledges that there were some errors relating to the concentration of methyl anthranilate used in the examples and Applicant has notified the Office of such errors. None of the presently pending claims are directed to using a specific concentration of methyl anthranilate. Therefore, the pending claims to a grape flavored post-harvest pome fruit and to a process for imparting grape flavor to a post-harvest pome fruit are not relying on that specific information. The specification provides clear teaching of this subject matter.

Regarding the amount of methyl anthranilate that is applied the specification clearly indicates that the amount is enough to impart the grape flavor to the post-harvest pome fruit. For example, see page 10 of the specification which provides the following:

in Examples 5, 8 and the fifth admixture of Example 14. However, the grape taste was found to be at an optimal level when the grape flavor complimented the existing flavor of the fruit, whether that flavor is an apple or a pear, for example. The most desirable level of grape flavoring is somewhat subjective and the exact "most desirable level" was found to depend significantly on a taster's personal preferences.

Using the teachings provided in the specification relating to applying methyl anthranilate to impart the desired grape flavor to a post-harvest pome fruit, those of ordinary skill in the art can practice the claimed subject matter. In light of these remarks Applicant respectfully requests that this rejection be withdrawn.

Indefiniteness - 35 USC § 112

Claims 20 and 21 have been rejected as allegedly being indefinite. Applicant has amended these claims to clarify the subject matter that they are directed to and Applicant believes that these amendments overcome the rejection. Therefore, Applicant respectfully requests that this rejection be withdrawn.

35 USC § 103

Claims 15-24 were rejected under 35 USC § 103(a) as being anticipated by Shillington et al. (US 3,533,810) in view of Gross (US 3,071,474) and www.thegoodcentcompany.com.

As mentioned in the previous Amendment and Response, all of the presently pending claims relate to a pome fruit comprising a grape flavor (claim 15) or a method of making a pome fruit having a grape flavor (claim 20). The Shillington et al. reference discloses a method of decreasing the susceptibility of fruits and vegetable to deterioration from bacteria, fungi, and other microorganisms (column 1, line 34). Shillington et al. additionally discloses the use of methyl anthranilate in an amount of between 0.05-0.10% (column 3, line 66). Such low concentrations of methyl anthranilate have been used in the past for the purpose indicated in Shillington et al., but would not provide the claimed grape flavored pome fruit.

The amount of methyl anthranilate needed to impart the grape flavor is different than that described in Shillington et al. This assertion is supported by the fact that regulatory agencies view the grape flavored pome fruit described in the instant claims as different from other apples, in part, because the flavoring agent is present when the fruit is purchased (see, declaration from

Todd Snyder). More specifically, the Canadian agency responsible for evaluating such products view Applicant's grape flavored pome fruit as a fresh product that also contains an ingredient, unlike apples that have not been treated. As provided in the accompanying declaration from Todd Snyder the Canadian Food Inspection Agency required additional review of the product and required that the product be labeled to describe the flavoring agent.

Additional evidence of the non-obviousness of Applicant's grape flavored pome fruit is supported by the commercial success of apples that are one of the subjects of the patent and the lack of similar products (see, declaration from Todd Snyder describing sales). As provided in Todd Snyder's declaration the subject apples have been well received in the market place. This is supported by the continued strong sales, as well as the high ratings given the product by consumers.

None of the references cited describe a pome fruit that has been processed to have grape flavor at the point of sale. The non-obviousness of the claimed subject matter is further supported by the commercial success of the product, and the review of the product based upon its novel characteristics by regulatory agencies. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Conclusion

Based on the forgoing amendments and remarks, Applicant believes the claims are in a condition for allowance and notification to this effect is requested.

Respectfully submitted,

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